IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.2702 OF 1991

1. Govind Gangadhar Walve]
Since deceased by heirs]
a) Barku Govind Walve]
b) Haribhau Govind Walve]
c) Digamber Govind Walve]
d) Jairam Govind Walve]
]
2. Waman Gangadhar Walve]
]
3. Sahadu Gangadhar Walve]
]
4. Nathu Gangadhar Walve]
]
All residing at village]
Ganga-Padali, Post:]
Lakhalgaon, Tal. and]
Dist. Nasik]..Petitioners

Versus

Shri.Baban Sadu Salve,]
Since deceased]
through his legal heirs]
1. Shri.Madhukar Baban]
Salve]
2. Shri.Vijay Baban Salve]
3. Shri.Yeshwant Baban Salve]
All residing at Village]
Ganga Padali, Post]
Lakhalgaon, Taluka &]
Dist. Nasik]..Respondents

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Mrs.S.A.Mudbidri for Petitioners
Mr.Nitin V.Gangal with G.B.Karandikar
for Respondent No.1

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CORAM : B.H.MARLAPALLE,J.

DATE : APRIL 13,2005

ORAL JUDGMENT:

1. This petition filed under Article 227 of the

Constitution of India takes exception to the order passed by the Maharashtra Revenue Tribunal in Tenancy Appeal No. 198 of 1988 remanding the case back to the Sub-Divisional officer for fresh enquiry under Section 9 of the Bombay Inferior Village Watans Abolition Act, 1958 (for short 'the Act'). In view of the stay order granted by this Court in terms of prayer clause (c) while admitting the petition, the Petitioners are in possession of the subject agricultural land about 1 H. 72 Are (4 Acres 22 Gunthas) from Survey No. 24/27 which is converted to Gat No. 102 of village Ganga Padali Taluka and District Nasik.

2. Admittedly, the said land was formerly an inferior Village Watan land Class VI-B and after coming into force of the Act, with effect from 26.11.1959 the suit land was resumed by the State Govt. and inturn re-granted to the original Watandar by name Baban Salve but on new tenure. The present Respondents are the legal representatives of the said Watandar Shri.Baban Salve. The Watandar entered into an Agreement for sale of the suit land with one Renubai the predecessor-in-title of the present Petitioners and put her in possession of the land on or about 26.11.1967 but without executing any sale deed. However, the Govt. intervened and the land came to be re-granted to the Watandar by the State

Govt. on or about 14.12.1967. It appears that inspite of this re-grant, Renubai continued to be in possession of the suit land and therefore, the Watandar filed Special Civil Suit No. 8 of 1972 seeking possession of the land consequent to the order of re-grant. At the same time, Renubai filed Special Civil Suit No. 92 of 1972 for specific performance of the Agreement for sale dated 26.1.1967. Both the suits were heard together and decided separately. They were dismissed on or about 30.1.1967. Thereafter the Watandar filed an application under Section 84 of the Bombay Tenancy and Agricultural Lands Act ('Bombay Tenancy Act' for short) for restoration of the possession of the suit land in his favour. The Assistant Collector Nasik, after conducting an enquiry directed restoration of possession vide his order dated 9.6.1977. This order came to be challenged by Renubai in Revision Application No. 239 of 1977 before the Maharashtra Revenue Tribunal which was pleased to allow the said revision and it held that the provisions of Section 84 of the Bombay Tenancy Act were not attracted to the suit land. The Watandar challenged the order passed by the Maharashtra Revenue Tribunal in W.P.No. 2618 of 1979 before this Court. By the order dated 20.12.1983, this Court was pleased to set aside the order passed by the Maharashtra Revenue Tribunal and the Assistant Collector/Sub-Divisional Officer was

directed to conduct a fresh enquiry under Section 9 of the Act so as to find out whether any eviction order could be made.

3. On remand, the Sub-Divisional Officer, Nasik dismissed the application of the Watandar by holding that the possession of Renubai was lawful and it could not be disturbed under Section 9 of the Act vide his order dated 22.7.1988. The Respondents therefore filed Tenancy Revision Application No. 198 of 1988 before the Maharashtra Revenue Tribunal under Section 76 of the Bombay Tenancy Act. A preliminary objection was raised by the present Petitioners pointing out that the Maharashtra Revenue Tribunal did not have jurisdiction to entertain the Revision Application under the Bombay Tenancy Act. However, the learned Member of the Tribunal vide his judgment and order dated 18.9.1990 was pleased to hold that the Revision Application was not maintainable. The learned Member further proceeded to set aside the order passed by the Sub-Divisional Officer on 22.7.1988 and he remanded the matter back to the Sub-Divisional Officer for fresh enquiry strictly according to the law and the directions given by this Court in W.P.No. 2618 of 1979 as well as by keeping in view the observations made by the Tribunal in its judgment.

4. The learned counsel for the Petitioners by referring to the findings recorded by the trial Court in dismissing the Special Civil Suits that Renubai was not in an unauthorised possession of the suit land, submitted that the enquiry under Section 9 was uncalled for and in any case, when the Sub-Divisional Officer recorded a finding that Renubai was not in an unauthorised possession and proceeded to hold that she could not be dispossessed from the suit land, this view taken by the Sub-Divisional Officer was not required to be upset by the Tribunal, more so, when it held that the Revision filed by the present Respondents, was not maintainable and consequently there was no occasion for the Tribunal to remand the enquiry for fresh decision to the Sub-Divisional Officer. Once the Tribunal held that the Revision was not tenable, it had no powers to proceed on merits of the case purportedly by taking the benefits of Section 151 of the C.P.C. The learned counsel for the Respondents on the other hand, has supported the order of remand and has also submitted that in view of the amendment to Section 59 (a) and (b) of the Maharashtra Revenue Code, 1966, the Revision filed before the Maharashtra Revenue Tribunal was maintainable. However, the Respondents did not agree with the findings of the Sub-Divisional officer that the possession of Renubai was not unauthorised and that she was therefore, entitled for retaining the

possession under proviso to Section 9(1) of the Act.

5. The status of Renubai, as authorised or an unauthorised holder is required to be decided within the meaning of the Act and not on the basis of the findings recorded by the trial Court in the Special Civil Suits filed by the respective parties as the suit land is a grant made in favour of the Watandar under the Act. Section 2(1)(x) of the Act defines the term "unauthorised holder" as under:

> . ""unauthorised holder" means a person in possession of a watan without any right or under a lease, mortgage, sale, gift or any other kind of alienation thereof which is null and void under the existing watan law;"

. Renubai got possession of the land on the basis of the Agreement for sale dated 26.1.1967 but in the suit for specific performance filed by her, the trial Court held that it was not an Agreement for sale but it was only an Agreement by way of surety against the amount advanced by Renubai to the Watandar. Even otherwise, the transaction falling within the meaning of lease, grant, will, gift or any other kind of alienation, would not help Renubai to claim to be in authorised possession as the said transactions are unknown to the Watan law and being in possession on account of any such transaction, shall mean an

unautorised holder within the meaning of Section 2(1)(x) of the Act.

6. The Scheme of Section 9 of the Act deals with eviction of unauthorised holder and re-grant of Watan land to such holder in certain circumstances, in the first para and in the second para, it talks about the disposal of the land not re-granted under sub-section (1). This Court in W.P.No.2618 of 1979 had directed a fresh enquiry under Section 9 of the Act and to be conducted by the Assistant Collector Nasik Division. This Court also noted that the first and primary question before the Assistant Collector would be to find out as to whom re-grant was made and under what conditions it was made. In addition, the Assistant Collector was also required to find out whether under Section 9 of the Act any eviction order could be made. This second direction was apparently by keeping in mind the proviso below sub-section (1) of Section 9 of the Act, which reads as under:

> . "9(1) Where any watan land resumed under section 4 is in possession of an unauthorised holder, such unauthorised holder shall be summarily evicted therefrom by the Collector in accordance with provisions of the Code;
>
> . Provided that where in the case of any unauthorised holder, the State Govt. is of opinion that in view of the investment made by such holder in the

> development of the land or in the non-agricultural use of the land or otherwise, the eviction of such holder from the land will involve undue hardship to him, it may direct the Collector to regrant the land to such holder on payment of such amount and subject to such terms and conditions as the State Govt. may determine and the Collector shall regrant the land to such holder accordingly."

7. While undertaking the enquiry under Section 9(1), if the Assistant Collector was of the opinion that the unauthorised holder had made investment in the development of the land or in the non-agricultural use of the land or otherwise and the eviction would involve undue hardship, he would have to submit a report to the State Govt. and it is for the State Govt. to form an opinion. If the State Govt. agrees with the report so submitted, it may regrant such holder on such terms and conditions as it may determine. It is not for the Assistant Collector or Sub-Divisional Officer to exercise the powers under the said proviso. Therefore, the order passed by the Sub-Divisional Officer in the instant case, suffers on two counts namely; a) holding Renubai to be in authorised possession and b) she cannot be dispossessed on account of the investment she has made and the eviction would cause hardship to her. The first observation is against the order passed by this Court and the second observation is without powers. By recording the opinion about investments

and undue hardship, it was necessary for the Sub-Divisional Officer to submit his report to the State Govt. for its consideration. Secondly,when this Court in W.P.No. 2618 of 1979 had directed an enquiry under Section 9 of the Act, it is implied that it was satisfied about Renubai being an unauthorised holder of the suit land and therefore, thre was no question of the Sub-Divisional Officer investigating her status. Thus, the order passed by the Sub-Divisional Officer is unsustainable and the Tribunal has rightly directed fresh enquiry. The parties have been at loggerheads from 1967 and therefore, it is necessary that the enquiry is concluded within the shortest possible time frame and undoubtedly after hearing the respective parties and as per law.

8. In the premises, this petition fails and the same is hereby dismissed. The Sub-Divisional Officer/Assistant Collector Nasik, is hereby directed to complete the fresh enquiry under Section 9(1) of the Act as expeditiously as possible and in any case within a period of three months from the date of the first appearance of the parties before him and pass an appropriate order. The parties to appear before the Sub-Divisional Officer/Assistant Collector on 25.4.2005 at 11.00 a.m.

9. Rule discharged with no order as to costs.

[B.H.MARLAPALLE,J.]